



Legal Update

January 2017

The SJC holds that information provided by an identified 911 caller who observed a man drive away and return to a high crime area, step from his vehicle and display a handgun, remain parked until police approached, and attempt to drive away, provided the police with reasonable suspicion to seize the defendant!

Commonwealth v Joshua Edwards, 476 Mass. 341 (2017):

Background: On March 17, 2013, Boston Police received a 911 call from a witness who identified himself and reported that saw a man “in the street holding a gun.” The witness relayed that the man drove off in a black motor vehicle, returned and parked on Armandine Street in Dorchester. When the man got out of the vehicle, he was holding a gun in his hand. The witness told the dispatcher that he knew the man as Joshua Edwards. The witness did not see the defendant, Joshua Edwards, threaten anyone.

Officer David Lanteigne of Boston Police received a police broadcast for a “priority 1 call” and drove to Armandine Street in a marked cruiser with no lights activated. When Officer Lanteigne drove down the street, a man (later identified as the witness) ran off his porch toward the cruiser and began "yelling" to the officer and pointing at a black Acura that was parked twenty to thirty feet in front of the cruiser, on the right hand side of the street.

The Acura was legally parked, but was completely dark and there were no internal or external lights on. Officer Lanteigne suddenly observed the Acura's brake lights illuminate, and the witness yelled something to the effect of, "That's him. That's the guy, he's about to drive away." Officer Lanteigne activated the cruiser's blue lights, strobe lights, and other lights, and moved the cruiser alongside the driver's side of the Acura in order to block the vehicle from leaving. The person the witness had seen with a handgun was driving the Acura.

Officer Lanteigne got out of the cruiser and removed his firearm from its holster. Edwards started walking away and took no notice of Officer Lanteigne. Officer Lanteigne pushed the defendant against the rear of the Acura, forced him to the ground when he resisted being pushed, and handcuffed him. Another officer who responded to the scene observed a firearm lying on the floor by the driver's seat of the Acura. Edwards was arrested and his vehicle towed since he did not have a Massachusetts license and the vehicle was not registered to him. An open container of beer was found in the car as well as a closed beer bottle. Edwards was charged and he filed a motion to suppress.

The motion to suppress was allowed and the judge found at the moment Officer Lanteigne used his vehicle to block the Acura he lacked reasonable suspicion to believe that criminal activity was afoot. Additionally, the judge concluded that a report of a man holding an unholstered gun on a public sidewalk, late at night in a high crime area, was not sufficiently suspicious to warrant an investigatory stop.

Conclusion: The SJC concluded that the stop was based on reasonable suspicion of criminal activity and therefore reversed the motion judge's order allowing the motion to suppress. The SJC further examined the facts into separate parts:

1. when the stop and seizure occurred;
2. whether the stop was supported by reasonable suspicion; and
3. whether the scope of the ensuing search was proportional to the degree of suspicion that prompted it.

1st Issue: Moment of Seizure

The SJC concluded that the defendant was seized when the officer activated his blue lights and blocked the defendant's vehicle with his cruiser. Viewed objectively, at that moment, a reasonable person would not have believed that he was free to leave the scene. See *Commonwealth v. Barros*, 435 Mass. 171, 173-174 (2001).

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.

2nd Issue: Did the police have reasonable suspicion to stop the motor vehicle?

“A police officer may stop a person to make a "threshold inquiry where suspicious conduct gives the officer reason to suspect that a person has committed, is committing, or is about to commit a crime." *Commonwealth v. Silva*, 366 Mass. 402, 405 (1974). Here the SJC found the stop was based on more than a hunch. Boston police had responded to a police radio broadcast. The caller identified himself and told dispatch that he personally saw the defendant with a gun at 1:30 A.M. on a deserted, residential street. Additionally, “the witness identified the defendant by name; explained that he knew the defendant; met Officer Lanteigne, at the address he had provided to the 911 dispatcher; and pointed out the defendant's vehicle to him.” The witness’s basis of knowledge was established as well as his reliability.

Although merely possessing a firearm in public is not illegal, the facts in this case suggest that Edwards’ behavior was more consistent with criminal activity than with lawful possession of a firearm. Edwards drove his vehicle away and then returned to Armandine Street where he got out of the vehicle and stood outside holding a gun - in his open hand. Edwards returned the firearm to his vehicle and then sat alone in the vehicle with all of its lights off. “These facts, coupled with the time (approximately 1:30 A.M.), the location (a deserted street in a residential area, "within a few blocks" of which there had been repeated crimes of violence, including gun violence and homicides), and the officer's belief that "trained, licensed owners of a handgun typically carry their firearm in a holster," combine to create a scenario that an experienced police officer could reasonably believe is more consistent with likely criminal activity than it is with lawful possession of a firearm.”

The SJC held that examining these facts collectively and considering the experience of Officer Lanteigne, were “sufficient to establish, *even if just barely*, the requisite nexus to suspected criminal activity to warrant an investigatory stop, because the officer "could reasonably infer from the conjunction of these facts that criminal activity might be afoot." *Commonwealth v. Thompson*, 427 Mass. 729, 734 (1998).

3rd Issue: Was the scope of the search proportional to the degree of suspicion?

The SJC held that Officer Lanteigne’s investigatory stop was objectively reasonable, as well as his actions based on the circumstances he confronted. Officer Lanteigne’s actions blocking the Acura’s egress with his cruiser and activating his emergency lights “were reasonably prudent protective measures that were proportional to the degree of suspicion that prompted the stop when he observed the defendant illuminate his brake lights. The defendant's actions following the initial seizure of the Acura increased the degree of reasonable suspicion, and the police response properly escalated in proportion to it. See *Commonwealth v. Sinforoso*,

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department’s legal advisor or prosecutor.

434 Mass. 320, 323 (2001) ("conduct of the officers was proportional to the escalating suspicion that emerged over the course of the stop").

Additionally, Officer Lanteigne was alone, late at night, on a deserted street in an area that he knew from his police experience had been the site of repeated incidents involving the use of guns as well as homicides and other violent crimes. He was also aware that Edwards was armed and had left the scene and then returned, and openly held a weapon on a residential street before concealing its presence by returning it to the vehicle. ***If the defendant had remained in the vehicle Officer Lanteigne would have been justified in issuing an exit order to conduct a threshold inquiry.***

Edwards left his vehicle and disregarded Officer Lanteigne's presence. Edwards failed to comply with Officer Lanteigne's order to stop and began to walk away. All of these factors, along with the defendant's resistance, certainly warranted the officer physically restraining Edwards for further investigation.

A back up officer arrived and observed a handgun on the floor of the vehicle near the driver's seat. The police were justified in determining "whether the object was, in fact, a weapon which could be used against them. The officers were not required to gamble with their personal safety." ***Commonwealth v. Robbins***, 407 Mass. 147, 152 (1990). Although the defendant was not in the vehicle at the time the gun was observed, "like the defendant in [***Commonwealth v. Silva***, 366 Mass. 402 (1974)], he was not under arrest at the time of the 'pat-down' search of his person, and there was no assurance that he would not be returning promptly to his seat behind the wheel of the automobile." ***Commonwealth v. Almeida***, 373 Mass. 266, 272 (1977). In the circumstances, the police intrusion into the vehicle was reasonably justified in scope.

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.